



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 30 2012

REPLY TO THE ATTENTION OF:

WW-16J

U.S. Army Corps of Engineers, Louisville District
James M. Townsend, Chief
Regulatory Branch
600 Dr. Martin Luther King Place
Louisville, Kentucky 40202

Subject: PN # LRL-2012-600/Trust Resources, LLC – Vigo Captain Daviess Mine

Dear Mr. Townsend:

The U.S. Environmental Protection Agency has reviewed the Public Notice issued on October 11, 2012 and the Section 404 permit application received electronically on November 19, 2012 for the proposed Vigo Caption Daviess surface coal mine in Daviess County, Indiana. We offer the following comments based on our review.

General comments

The application for the individual Section 404 Permit is very general and omits significant information that may or may not be available in other documents. A review of these documents does not provide sufficient information to make a reasonable judgment as to whether the proposed project would comply with the 404(b)(1) guidelines.

Avoidance and Minimization

The proposed project would fill 44.2 acres of open water, 11.09 acres of wetland, and 50,884 linear feet of tributaries to the East Fork of the White River, a water of the United States. In addition, the proposed project area is only 650 ft from the East Fork White River, and in one section, is within 100 feet of the East Fork White River. The applicant has not demonstrated there are no practicable alternatives available that would have a less adverse impact on the aquatic environment. Proposed impacts have not been avoided and/or minimized to the maximum extent practicable.

Mitigation

The mitigation plan indicates that 50,718 linear feet of streams will be impacted, which differs slightly from the Public Notice. The mitigation plan also indicates that not all portions of the

impacted streams and open water will be restored or mitigated for, and emergent wetland would only be mitigated at a 1:1 ratio. The applicant should provide details on how the mitigation ratios were determined. We recommend a minimum of 1:1 ratio for all stream mitigation and open water mitigation and a minimum of 2:1 ratio for all emergent wetland mitigation.

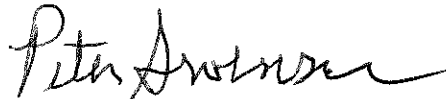
Performance Standards

The applicant proposes to measure stream mitigation success by using the Rosgen Level III and the EPA RBP protocols, which focus on physical parameters. The applicant must also use biological and chemical methods to evaluate stream mitigation success.

The applicant has stated that monitoring will be conducted annually. The applicant should provide justification for the sampling frequency needed to show a detectable change for each performance standard. Some measures may require more frequent monitoring than once a year.

EPA objects to the issuance of a permit for the project as proposed because it does not comply with the 404(b)(1) guidelines. Please contact me at (312) 886-0236 or Scott McWhorter at (312) 886-6100 to discuss our concerns or if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Swenson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter Swenson, Chief
Watersheds and Wetlands Branch